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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,609	10/29/2003	Wanda J. May	09999-0603--May	6858

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EXAMINER
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CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/696,609	MAY, WANDA J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	FREDRICK C CONLEY	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,10-19,21-24 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-19,26-28 and 29-33 is/are allowed.
- 6) ☒ Claim(s) 1-3,5,12-15 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 12, 21-22, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,605,235 to Johnson in view of U.S. Pat. No. 4,466,148 to Jones.

In reference to claims 1 and 33, Johnson discloses a caddy 10 for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising;

a first member,

a second member connected to said first member, wherein one of said first and second members is insertable between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and cushion support structure, and wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, and wherein said first and second members are interchangeably operable as said captured portion and said free portion, whereby said free portion is disposed substantially vertically when said captured portion is inserted between the furniture cushioning object and cushion support structure (fig. 1-2),

a receptacle 12 having an open end for releasably receiving at least one item therein. Johnson fails to disclose a means for connecting the receptacle to a free end portion. Jones discloses a mounting device securable between a cushion and cushion support having a receptacle attached to a free end portion by a means 16 for connecting. It would have been obvious to employ a connecting means as taught by Jones in order to detachably secure the receptacle to the free end of Johnson in order to adjustably secure the receptacle to the free end of Johnson. With regards with the Applicant's recitation "wherein said ' first and second members are interchangeably operable as said captured portion and said free portion" and "whereby a user of the caddy can orient said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion" it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQZd 1647 (1987). In addition, the device of Johnson, as modified, is inherently capable of having the first and second members interchangeably operably and orienting the receptacle upward regardless of whether the free end portion extends upwardly or downwardly since they both have a generally planar construction and the detachable means taught by Jones clearly orient the receptacle upward.

Claim 2, wherein at least one of said first and second members is substantially planar.

Claim 3, wherein both of said first and second members are substantially planar.

Claim 5, wherein said first and second members are permanently connected to one another at a substantially perpendicular angle.

Claim 12, wherein said means for connecting said receptacle to said free portion comprise means for releasably connecting said receptacle to said free portion (col. 3 lines 43-46)(Jones).

Claim 21, wherein said means for releasably connecting said receptacle to said free portion comprise bracket means 18 carried by said free portion for slidably receiving said receptacle (Jones).

Claim 22, wherein said means for releasably connecting said receptacle to said free portion comprise a cooperating male and female fastener arrangement (16,21) (Jones).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,605,235 to Johnson in view of U.S. Pat. No. 4,466,148 to Jones and U.S. Pat. No. 4,022,361 to Devlin.

In reference to claim 13, Jones discloses all of the Applicant's claimed limitations except for the receptacle having a hook and loop fastener. Delvin discloses a receptacle having a hook and loop (col. 3 lines 3-8). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a hook and loop fastener as taught by Delvin in order to detachably secure the receptacle to the bed.

Claims 14-15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable U.S. Pat. No. 5,605,235 to Johnson in view of U.S. Pat. No. 4,466,148 to Jones and U.S. Pat. No. 5, 11 1,545 to Krozal.

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In reference to claims 14 and 23, Jones discloses all of the Applicant's claimed limitations except for the receptacle having a snap fastener. Krozal discloses a receptacle having a snap fastener wherein the receptacle carries a male component 57 and the free portions includes at least one opening defining the female component 59. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a snap fastener as taught by Krozal in order to easily remove the receptacle from the bed.

Claim 15, further comprising interference means 18 for preventing inadvertent rotation of said receptacle with respect to said free portion.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,605,235 to Johnson in view of U.S. Pat. No. 4,466,148 to Jones and U.S. Pat. No. 5,916,087 to Owens.

In reference to claim 24, Jones discloses all of the Applicant's claimed limitations except for having a snap fastener with a magnetic means carried by said receptacle and said free portion. Owens discloses a snap fastener (73,74) having a magnetic means carried by said receptacle and said free portion (col. 8 lines 24-29). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the magnetic means as taught by Owens with the device of Jones in order to provide an indication that the firearm is being removed from the receptacle.

***Allowable Subject Matter***

Claims 17-19, 26-28, and 29-32 are allowed.

Claims 10-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 1/24/05 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Monolithic is interpreted as solid or uniform. Both Johnson and Jones disclose solid or uniform mounting devices that hold items. The combination of references, as a whole, would suggest a solid/uniform mounting device that allows for multiple attachments at a desired height.

With regards to the Applicant's remarks, the Applicant's claim is drawn to the apparatus and not a process nor a method. Johnson does not need to explicitly teach the first and second members are interchangeably operable. In order to meet the limitation of interchanging the first and second members the structure of the prior art is only required to have an inherent capability of performing the limitation. The Applicant's claims fail to recite any structural differences that enable the device to function in the

manner claimed that is not already taught by the structure of Johnson. The first and second members (26,28) of Johnson are generally planar in construction as clearly illustrated in figure 3 thus the first and second members are inherently capable of being interchanged as captured portion or free end portion. Jones teaches a captured member 13 and a vertical member having free end portions extend upwardly and downwardly with a connection means 16 enabling the user to orient the receptacle 40 upwardly when connected to either the upward or downward free end portions of the vertical member. Therefore, the modification of Johnson with the connection means of Jones inherently allows the user to interchange the first and second members as captured and free end portions, but it also allows the receptacle to be releasably positioned on either the first or second members while maintaining an upward orientation as taught by Jones. Until a receptacle is claimed on the other of the first and second members. The device of Johnson in view of Jones is interchangeable to the degree that the Applicant's invention is interchangeable.

As stated above, the connection means 16 of Jones enables the user to orient the receptacle 40 upwardly when connected to either the upward or downward free end portions of the vertical member while selecting a desired height.



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **FREDRICK C CONLEY** whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **HEATHER SHACKELFORD** can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



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